

Introduced by Senator BowenFebruary 21, 2003

An act to amend Sections 352 and 372 of, to amend and renumber Section 454.1 of, to add Section 345.3 to, to repeal Sections 346, 348, and 350 of, and to repeal Article 2 (commencing with Section 334), Article 4 (commencing with Section 355), and Article 5 (commencing with Section 359) of Chapter 2.3 of Part 1 of, the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 920, as introduced, Bowen. Electricity Oversight Board: Independent System Operator: Power Exchange.

(1) The existing restructuring of the electrical services industry within the Public Utilities Act provides for the establishment of an Independent System Operator and a Power Exchange as separately incorporated public benefit nonprofit corporations. An Electricity Oversight Board (Oversight Board) is also established to oversee the Independent System Operator and the Power Exchange in order to ensure the success of electric industry restructuring and to ensure a reliable supply of electricity in the transition to a new market structure. Pursuant to an order of the Federal Energy Regulatory Commission, the Power Exchange has ceased to function. The Oversight Board is granted various powers including, but not limited to, requiring the revision of the bylaws of the Independent System Operator and the approval of the entry of the Independent System Operator into a multistate entity or a regional organization. Existing law requires the Independent System Operator to adopt certain inspection, maintenance, repair, and replacement standards for the transmission facilities under its control and to make a related report to the Oversight Board. Existing



law authorizes the Independent System Operator and the Power Exchange to enter into a regional compact or other comparable agreement to become western states regional organizations.

This bill would repeal those provisions establishing, and granting powers to, the Oversight Board, and would make certain conforming changes to existing law. The bill would require the Independent System Operator to revise its own bylaws, would require the Legislature to approve the entry of the Independent System Operator into a multistate entity or a regional organization, and would repeal that provision regarding the adoption of standards for transmission facilities. Because any violation of the Public Utilities Act is a crime, the bill, by establishing new duties for the Independent System Operator, would impose a state-mandated local program by changing the definition of a crime. The bill would repeal certain provisions relating to the Power Exchange. The bill would repeal the regional compact provision.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Article 2 (commencing with Section 334) of
2 Chapter 2.3 of Part 1 of the Public Utilities Code is repealed.

3 SEC. 2. Section 345.3 is added to the Public Utilities Code, to
4 read:

5 345.3. (a) The Independent System Operator governing
6 board shall be composed of a five-member independent governing
7 board of directors appointed by the Governor and subject to
8 confirmation by the Senate. Any reference in this chapter or in any
9 other provision of law to the Independent System Operator
10 governing board means the independent governing board
11 appointed under this subdivision.

12 (b) A member of the independent governing board appointed
13 under subdivision (a) may not be affiliated with any actual or



potential participant in any market administered by the Independent System Operator.

(c) (1) All appointments shall be for three-year terms.

(2) There is no limit on the number of terms that may be served by any member.

(d) The Independent System Operator shall revise its articles of incorporation and bylaws in accordance with this section, and shall make filings with the Federal Energy Regulatory Commission as it determines to be necessary.

(e) For the purposes of the initial appointments to the Independent System Operator governing board, as provided in subdivision (a), the Governor shall appoint one member to a one-year term, two members to a two-year term, and two members to a three-year term.

SEC. 3. Section 346 of the Public Utilities Code is repealed.

~~346. The Independent System Operator shall immediately participate in all relevant Federal Energy Regulatory Commission proceedings. The Independent System Operator shall ensure that additional filings at the Federal Energy Regulatory Commission request confirmation of the relevant provisions of this chapter and seek the authority needed to give the Independent System Operator the ability to secure generating and transmission resources necessary to guarantee achievement of planning and operating reserve criteria no less stringent than those established by the Western Systems Coordinating Council and the North American Electric Reliability Council.~~

SEC. 4. Section 348 of the Public Utilities Code is repealed.

~~348. The Independent System Operator shall adopt inspection, maintenance, repair, and replacement standards for the transmission facilities under its control no later than September 30, 1997. The standards, which shall be performance or prescriptive standards, or both, as appropriate, for each substantial type of transmission equipment or facility, shall provide for high quality, safe, and reliable service. In adopting its standards, the Independent System Operator shall consider: cost, local geography and weather, applicable codes, national electric industry practices, sound engineering judgment, and experience. The Independent System Operator shall also adopt standards for reliability, and safety during periods of emergency and disaster. The Independent System Operator shall report to the Oversight~~

1 Board, at such times as the Oversight Board may specify, on the
2 development and implementation of the standards in relation to
3 facilities under the operational control of the Independent System
4 Operator. The Independent System Operator shall require each
5 transmission facility owner or operator to report annually on its
6 compliance with the standards. That report shall be made available
7 to the public.

8 SEC. 5. Section 350 of the Public Utilities Code is repealed.

9 350. ~~The Independent System Operator, in consultation with~~
10 ~~the California Energy Resources Conservation and Development~~
11 ~~Commission, the Public Utilities Commission, the Western~~
12 ~~Systems Coordinating Council, and concerned regulatory~~
13 ~~agencies in other western states, shall within six months after the~~
14 ~~Federal Energy Regulatory Commission approval of the~~
15 ~~Independent System Operator, provide a report to the Legislature~~
16 ~~and to the Oversight Board that does the following:~~

17 (a) ~~Conducts an independent review and assessment of Western~~
18 ~~Systems Coordinating Council operating reliability criteria.~~

19 (b) ~~Quantifies the economic cost of major transmission outages~~
20 ~~relating to the Pacific Intertie, Southwest Power Link, DC link,~~
21 ~~and other important high voltage lines that carry power both into~~
22 ~~and from California.~~

23 (c) ~~Identifies the range of cost-effective options that would~~
24 ~~prevent or mitigate the consequences of major transmission~~
25 ~~outages.~~

26 (d) ~~Identifies communication protocols that may be needed to~~
27 ~~be established to provide advance warning of incipient problems.~~

28 (e) ~~Identifies the need for additional generation reserves and~~
29 ~~other voltage support equipment, if any, or other resources that~~
30 ~~may be necessary to carry out its functions.~~

31 (f) ~~Identifies transmission capacity additions that may be~~
32 ~~necessary at certain times of the year or under certain conditions.~~

33 (g) ~~Assesses the adequacy of current and prospective~~
34 ~~institutional provisions for the maintenance of reliability.~~

35 (h) ~~Identifies mechanisms to enforce transmission~~
36 ~~right-of-way maintenance.~~

37 (i) ~~Contains recommendations regarding cost-beneficial~~
38 ~~improvements to electric system reliability for the citizens of~~
39 ~~California.~~

SEC. 6. Section 352 of the Public Utilities Code is amended to read:

352. The Independent System Operator may not enter into a multistate entity or a regional organization ~~as authorized in Section 359~~ unless that entry is approved by the ~~Oversight Board~~ Legislature.

SEC. 7. Article 4 (commencing with Section 355) of Chapter 2.3 of Part 1 of the Public Utilities Code is repealed.

SEC. 8. Article 5 (commencing with Section 359), of Chapter 2.3 of Part 1 of the Public Utilities Code is repealed.

SEC. 9. Section 372 of the Public Utilities Code is amended to read:

372. (a) It is the policy of the state to encourage and support the development of cogeneration as an efficient, environmentally beneficial, competitive energy resource that will enhance the reliability of local generation supply, and promote local business growth. Subject to the specific conditions provided in this section, the commission shall determine the applicability to customers of uneconomic costs as specified in Sections 367, 368, 375, and 376. Consistent with this state policy, the commission shall provide that these costs shall not apply to any of the following:

(1) To load served onsite or under an over the fence arrangement by a nonmobile self-cogeneration or cogeneration facility that was operational on or before December 20, 1995, or by increases in the capacity of such a facility to the extent that such increased capacity was constructed by an entity holding an ownership interest in or operating the facility and does not exceed 120 percent of the installed capacity as of December 20, 1995, provided that prior to June 30, 2000, the costs shall apply to over the fence arrangements entered into after December 20, 1995, between unaffiliated parties. For the purposes of this subdivision, “affiliated” means any person or entity that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common on control with another specified entity. “Control” means either of the following:

(A) The possession, directly or indirectly, of the power to direct or to cause the direction of the management or policies of a person or entity, whether through an ownership, beneficial, contractual, or equitable interest.

1 (B) Direct or indirect ownership of at least 25 percent of an
2 entity, whether through an ownership, beneficial or equitable
3 interest.

4 (2) To load served by onsite or under an over the fence
5 arrangement by a nonmobile self-cogeneration or cogeneration
6 facility for which the customer was committed to construction as
7 of December 20, 1995, provided that the facility was substantially
8 operational on or before January 1, 1998, or by increases in the
9 capacity of such a facility to the extent that the increased capacity
10 was constructed by an entity holding an ownership interest in or
11 operating the facility and does not exceed 120 percent of the
12 installed capacity as of January 1, 1998, provided that prior to June
13 30, 2000, the costs shall apply to over the fence arrangements
14 entered into after December 20, 1995, between unaffiliated
15 parties.

16 (3) To load served by existing, new, or portable emergency
17 generation equipment used to serve the customer's load
18 requirements during periods when utility service is unavailable,
19 provided such emergency generation is not operated in parallel
20 with the integrated electric grid, except on a momentary parallel
21 basis.

22 (4) After June 30, 2000, to any load served onsite or under an
23 over the fence arrangement by any nonmobile self-cogeneration or
24 cogeneration facility.

25 (b) Further, consistent with state policy, with respect to
26 self-cogeneration or cogeneration deferral agreements, the
27 commission shall do the following:

28 (1) Provide that a utility shall execute a final self-cogeneration
29 or cogeneration deferral agreement with any customer that, on or
30 before December 20, 1995, had executed a letter of intent (or
31 similar documentation) to enter into the agreement with the utility,
32 provided that the final agreement shall be consistent with the terms
33 and conditions set forth in the letter of intent and the commission
34 shall review and approve the final agreement.

35 (2) Provide that a customer that holds a self-cogeneration or
36 cogeneration deferral agreement that was in place on or before
37 December 20, 1995, or that was executed pursuant to paragraph (1)
38 in the event the agreement expires, or is terminated, may do any
39 of the following:



1 (A) Continue through December 31, 2001, to receive utility
2 service at the rate and under terms and conditions applicable to the
3 customer under the deferral agreement that, as executed, includes
4 an allocation of uneconomic costs consistent with subdivision (e)
5 of Section 367.

6 (B) Engage in a direct transaction for the purchase of electricity
7 and pay uneconomic costs consistent with Sections 367, 368, 375,
8 and 376.

9 (C) Construct a self-cogeneration or cogeneration facility of
10 approximately the same capacity as the facility previously
11 deferred, provided that the costs provided in Sections 367, 368,
12 375, and 376 shall apply consistent with subdivision (e) of Section
13 367, unless otherwise authorized by the commission pursuant to
14 subdivision (c).

15 (3) Subject to the fire wall described in subdivision (e) of
16 Section 367 provide that the ratemaking treatment for
17 self-cogeneration or cogeneration deferral agreements executed
18 prior to December 20, 1995, or executed pursuant to paragraph (1)
19 shall be consistent with the ratemaking treatment for the contracts
20 approved before January 1995.

21 (c) The commission shall authorize, within 60 days of the
22 receipt of a joint application from the serving utility and one or
23 more interested parties, applicability conditions as follows:

24 (1) The costs identified in Sections 367, 368, 375, and 376 shall
25 not, prior to June 30, 2000, apply to load served onsite by a
26 nonmobile self-cogeneration or cogeneration facility that became
27 operational on or after December 20, 1995.

28 (2) The costs identified in Sections 367, 368, 375, and 376 shall
29 not, prior to June 30, 2000, apply to any load served under over the
30 fence arrangements entered into after December 20, 1995,
31 between unaffiliated entities.

32 (d) For the purposes of this subdivision, all onsite or over the
33 fence arrangements shall be consistent with Section 218 as it
34 existed on December 20, 1995.

35 (e) To facilitate the development of new microcogeneration
36 applications, electrical corporations may apply to the commission
37 for a financing order to finance the transition costs to be recovered
38 from customers employing the applications.

39 (f) To encourage the continued development, installation, and
40 interconnection of clean and efficient self-generation and

1 cogeneration resources, to improve system reliability for
2 consumers by retaining existing generation and encouraging new
3 generation to connect to the electric grid, and to increase
4 self-sufficiency of consumers of electricity through the
5 deployment of self-generation and cogeneration, both of the
6 following shall occur:

7 (1) The commission ~~and the Electricity Oversight Board~~ shall
8 determine if any policy or action undertaken by the Independent
9 System Operator, directly or indirectly, unreasonably discourages
10 the connection of existing self-generation or cogeneration or new
11 self-generation or cogeneration to the grid.

12 (2) If the commission ~~and the Electricity Oversight Board~~ find
13 that any policy or action of the Independent System Operator
14 unreasonably discourages, the connection of existing
15 self-generation or cogeneration or new self-generation or
16 cogeneration to the grid, the commission ~~and the Electricity~~
17 ~~Oversight Board~~ shall undertake all necessary efforts to revise,
18 mitigate, or eliminate that policy or action of the Independent
19 System Operator.

20 SEC. 10. Section 454.1 of the Public Utilities Code, as added
21 by Chapter 1040 of the Statutes of 2000, is amended and
22 renumbered to read:

23 ~~454.1.~~

24 454.6. (a) Reasonable expenditures by transmission owners
25 that are electrical corporations to plan, design, and engineer
26 reconfiguration, replacement, or expansion of transmission
27 facilities are in the public interest and are deemed prudent if made
28 for the purpose of facilitating competition in electric generation
29 markets, ensuring open access and comparable service, or
30 maintaining or enhancing reliability, whether or not these
31 expenditures are for transmission facilities that become
32 operational.

33 (b) The commission ~~and the Electricity Oversight Board~~ shall
34 ~~jointly~~ facilitate the efforts of the state's transmission owning
35 electrical corporations to obtain authorization from the Federal
36 Energy Regulatory Commission to recover reasonable
37 expenditures made for the purposes stated in subdivision (a).

38 (c) Nothing in this section alters or affects the recovery of the
39 reasonable costs of other electric facilities in rates pursuant to the
40 commission's existing ratemaking authority under this code or

1 pursuant to the Federal Power Act (41 Stat. 1063; 16 U.S.C. Secs.
2 791a, et seq.). The commission may periodically review and adjust
3 depreciation schedules and rates authorized for an electric plant
4 that is under the jurisdiction of the commission and owned by
5 electrical corporations and periodically review and adjust
6 depreciation schedules and rates authorized for a gas plant that is
7 under the jurisdiction of the commission and owned by gas
8 corporations, consistent with this code.

9 SEC. 11. No reimbursement is required by this act pursuant
10 to Section 6 of Article XIII B of the California Constitution
11 because the only costs that may be incurred by a local agency or
12 school district will be incurred because this act creates a new crime
13 or infraction, eliminates a crime or infraction, or changes the
14 penalty for a crime or infraction, within the meaning of Section
15 17556 of the Government Code, or changes the definition of a
16 crime within the meaning of Section 6 of Article XIII B of the
17 California Constitution.

